REMARKS

Claims 1-17 are pending. The objection to the specification has been addressed below. Claims 11 and 13 have been cosmetically amended to clarify the claim language. No new matter has been added. In view of the above amendments and the comments below, Applicants respectfully request withdrawal of the rejections and objections of the claims and allowance of the application.

Specification

The office action objects to the disclosure because of various informalities: on page 7, line 28 to page 8, line 7, it is not clear whether the number of frames are 50, 60 or 70.

Applicants respectfully point out that the disclosure clearly explains the relationship of the numerical references related to windows and frames. For example, the disclosure (page 7, lines 17-19 and Fig. 2) describes a window 70 that contains 50 frames composed of frames 60-68 and that frame 60 is the current frame. Applicants respectfully request withdrawal of this objection in light of the above comments.

Claim Rejections - 35 USC § 112

Claims 13-17 have been rejected as being indefinite. In particular, in claim 13, the phrases "the aggregate data" and "normalized aggregate rate" have been rejected for lacking antecedent basis. In claim 11, the phrase "the window" has been rejected for lacking antecedent basis.

To overcome these rejections, claims 13 and 11 have been amended as indicated above. Although not required by the rejection, claim 13 has been rewritten in independent form. In particular, in the preamble of claim 13, the word "The" has been replaced with the word "A" to make clear that the form of the claim is independent. In contrast, in the preamble of claim 11, the word "A" has been replaced with the word "The" to make clear that the form of the claim is dependent. In view of the above amendments and comments, Applicants respectfully request withdrawal of this objection and allowance of claim 13-17.

Claim Rejections – 35 USC §102

Claims 1-7 have been rejected under 35 USC 102(e) as being anticipated by Salonaho et al. (US 6,594,495). According to the Office Action:

> Salonaho discloses, in Fig. 2, a method of determining the reverse link data rate for a mobile station of a high data rate system comprising the steps of:
>
> adding together the rates at which data is being transmitted from each mobile in a common sector to obtain an aggregate rate (column 5, line 66-column 6, line 3),
>
> obtaining a moving average of the aggregate rate (column 6, line 3-7), and
>
> normalizing the aggregate rate to generate an estimate of the maximum aggregate reverse link rate (column 6, line 3-31)

Applicants respectfully traverse the rejection of claims 1-7 and disagree with the Examiner's characterization of Salonaho.

First, Applicants respectfully assert that Salonaho fails to teach the step of "adding together the rates at which data is being transmitted from each mobile in a common sector to obtain an aggregate rate" as recited in claim 1 of the present invention. The Office Action asserts that this claimed feature is disclosed in the Salonaho passage at

column 5, line 66-column 6, line 3. As explained below, Salonaho does not deal with **rates of data** as in the present invention.

Salonaho discloses a communication system technique in which a load can be optimally controlled at a connection and/or cell level to prevent overload conditions. However, the passage asserted by the Office Action actually refers to a technique that includes combining "**signal strength** P_{rx} of the desired signals." (Emphasis added) It makes no mention of the data rate of signals in forming the combination. It is clear that Salonaho deals with signal strength of signals as stated in the summary section: "forming a combined **signal strength** of one or more desired signals and forming a combined **signal strength** of the interferences and one or more desired signals." (Emphasis added; See column 2, lines 31-33) In other words, Salonaho considers the **signal strength** characteristic of a signal and not the data rate in making its calculations.

In sharp contrast, the claimed invention adds together the **rates** at which data is being transmitted from each mobile to obtain an aggregate rate. That is, the claimed invention deals with the measurement of **data rates** whereas Salonaho deals with the **signal strength** of signals and interferences. It is clear that the data rate of a signal is not the same as the signal strength of a signal. These are two different characteristics used for different purposes. Therefore, Salonaho does not teach or suggest claim 1 for at least these reasons.

Second, Applicants respectfully assert that Salonaho fails to disclose a "high data rate system" as recited in claim 1 of the present invention. A high data rate (HDR) system is an evolving system that shares the same spectrum with an IS-95/IS-2000/3G 1X system by using a separate 1.25 MHz frequency dedicated to HDR. In contrast, the

invention of Salonaho is applied to "interference limited cellular radio systems and particulary CDMA systems." See column 1, lines 33-34. Thus, the techniques of Salonaho may not be compatible with the current invention because they are directed to two different communication standards. Therefore, claim 1 is not taught or suggested by Salonaho for at least these additional reasons.

Moreover, Salonaho fails to teach the step of "obtaining a moving average of the aggregate rate" as recited in claim 1 of the present invention. The Office Action asserts that the passage in Salonaho at column 6, line 3-7 discloses this feature. We respectfully disagree. Instead, the passage refers to comparing the signal strength P_{rx} to the total signal strength P_{rx} + I whereby a load result L is obtained. The value of L is determined by equations (4) and (5) which are simple summing functions. (See column 5, lines 20 to 39). However, such a simple **summing** function is **not** equivalent to a obtaining a **moving average** of the aggregate rate as recited in claim 1 of the present invention. Thus, claim 1 is not taught or suggested by Salonaho for at least these additional reasons.

In light of the above comments, Applicants respectfully submit that claim 1 and respective dependent claims 2-7 are not anticipated by the Salonaho reference for at least the above reasons.

Claim Rejections – 35 USC §103

Claims 8-12 have been rejected under 35 USC 103(a) as being unpatentable over Salonaho et al. in view of Alcatel (EP 1100283).

As explained above, Applicants believe that Salonaho fails to teach or suggest independent claim 1 of the present invention. In addition, none of the cited references,

including Alcatel, or any combination thereof teach or suggest dependent claims 8-12 or any claims of the present invention, for at least the same reasons mentioned above with respect to claim 1.

New claim 13

As explained above, original dependent claim 13 has been cosmetically amended to be independent form. New independent claim 13 recites similar claim language as claim 1. In particular, claim 13 deals with the processing of data rates. Claim 1 should be allowable for the reasons explained above. Thus, new independent claim 13 and dependent claims 14-17 should be allowable for at least the same reasons as claim 1.

Request for Reconsideration pursuant to 37 CFR 1.111

Having responded to each and every ground for objection and rejection in the Office Action mailed on May 19, 2004, Applicants request reconsideration in the instant application pursuant to 37 CFR 1.111 and request that the Examiner allow claims 1-17 and pass the application to issue. If there is any point requiring further attention prior to allowance, the Examiner is asked to contact Applicants' counsel who can be reached at the telephone number listed below.

Respectfully,

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